

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In Re: ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION (No. VI)	:	Civil Action No:
	:	MDL 875
This Document Relates Only to the	:	
Cases Identified on the Attached List	:	
(Hereinafter referred to as CVLO-2)	:	

CASE MANAGEMENT AND SCHEDULING ORDER FOR CVLO-2

AND NOW, this 15th day of August, 2011, in accordance with the principles and procedures set out in this Court's "Case Management and Scheduling Order for CVLO-1" of July 15, 2011 and the amendment to that Order of August 4, 2011, **IT IS HEREBY ORDERED THAT**, as to the cases identified in Exhibit "A," the following discovery and pretrial management deadlines shall apply:

1. Defendants shall file any motions to dismiss based upon noncompliance with Administrative Order No. 12 by: August 26, 2011
2. Plaintiffs shall respond to any such motions to dismiss by: September 9, 2011
3. All medical evidence in plaintiffs' possession, or that will be presented to, or relied upon by plaintiffs' experts, including X-rays, pathology, and 524(g) bankruptcy trust submissions shall be submitted to IKON by: September 16, 2011
4. HIPAA-compliant medical authorizations shall be submitted to the defense by: September 16, 2011
5. All discovery relating to medical diagnosis, including medical records and related records discovery, must be completed by: October 14, 2011
- 5A. Discovery requests regarding product-specific and exposure evidence pursuant to Federal Rules of Civil Procedure 33, 34, and 36 may be issued at any time. However, the parties are precluded from taking any depositions pertaining to questions of product identification and exposure before October 10, 2011 unless counsel for all interested parties agree or any particular proposed deponent is suffering from a serious medical condition such as to be deemed *in extremis*.

6. Plaintiffs shall file any plaintiff-specific expert reports relating to medical diagnosis by: October 28, 2011
7. Defendants shall file any plaintiff-specific expert reports relating to medical diagnosis by: November 11, 2011
8. Discovery relating to medical diagnosing experts, including depositions, must be completed by: November 25, 2011
9. Any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: November 30, 2011
10. Responses to any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: December 9, 2011
11. Replies to any motions *in limine* seeking to exclude medical diagnosing experts must be filed by: December 16, 2011
12. All remaining fact discovery must be completed by: February 1, 2011
13. Plaintiff's remaining expert reports must be filed by: February 17, 2012
14. Defendants' remaining expert reports must be filed by: February 29, 2012
15. All remaining expert discovery must be completed by: March 14, 2012
16. Any dispositive motions must be filed by: March 23, 2012
17. Responses to any dispositive motions must be filed by: April 6, 2012
18. Replies to any dispositive motions must be filed by: April 13, 2012
19. Responses to requests for documents, and other paper discovery must be served by production to the IKON Depository, and accessed in the manner set out in Judge Reed's Order of March 28, 2011.
20. Depositions conducted during discovery are to be governed by the Federal Rules of Civil Procedure, as modified by the Deposition Protocol entered on August 4, 2011 as part of the "Amended Case Management and Scheduling Order for CVLO-1," and attached to this Order as Exhibit "B", as well as any future protocol agreed to by the parties and approved by the Court.

21. Discovery is not to occur in any cases filed by Cascino Vaughan Law Offices which have not been placed on a scheduling order. The Court will entertain, however, from any party a request for leave to take a deposition of any individual with relevant information who is suffering from a serious medical condition such as to be deemed *in extremis*. Such a deposition is not to be noticed unless leave of court has been given.
22. The role of defense liaison counsel will be to coordinate communications between the defense and the Court and to work with plaintiffs' counsel to come to agreement on broad issues. However, to the extent any party should have a particular objection or issue with regard to any case, that party is free to deal with plaintiffs' counsel directly.
23. A settlement conference, with client representatives to be in attendance in person, shall take place at such time as the Court, upon the recommendations of the parties or otherwise, deems appropriate.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

Last Name	First Name	PA-ED Case #
Allen	Gary	10-CV-67536
Allen	Louis	08-CV-90142
Almeda	Trini	08-CV-91698
Amos	Excell	08-CV-89998
Andrews	Donald	08-CV-90211
Appelberg	Harold	08-CV-90052
Ardaugh	William	08-CV-90066
Arrington	William	08-CV-90105
Arseneault	Clovis	10-CV-67621
Bailey	Samuel	08-CV-90153
Ballard	Paul	08-CV-89896
Beavers	James	08-CV-90177
Bergstrom	Lester	08-CV-89980
Bey	George	08-CV-89979
Beyer	Harold	08-CV-91894
Block	John	08-CV-91649
Botka	William	08-CV-89948
Brant	Harold	10-CV-67723
Brewer	David	08-CV-89954
Briesacher	Edward	09-CV-61874
Brigham	George	08-CV-89984
Brookins	Henry	08-CV-89810
Bryan	William	08-CV-89866
Buchanan	Howard	08-CV-92038
Buchanan	Raymond	08-CV-90327
Bullis	Richard	08-CV-90085
Campo	Jack	10-CV-67629
Carlson	Neil	10-CV-67533
Carlson	Robert	08-CV-89945
Carmichael	James	10-CV-67545
Carnaghi	Richard	08-CV-89952
Carnegie	John	08-CV-89958
Case	Fred	10-CV-67607
Colombo	Richard	10-CV-67538
Cook	Jerry	08-CV-89846
Cooper	Larry	08-CV-90330
Costa	Frank	08-CV-90053
Cushing	George	08-CV-89989
Czajkoski	Walter	08-CV-89969
D'Amico	Carmen	10-CV-67534
D'Ottavio	Nello	10-CV-67554

Daniels	Jimmie	08-CV-92259
Davis	James	08-CV-90006
De Witt	Elsie	08-CV-90189
Deangelis	Salvatore	08-CV-89953
Deloach	Thomas	08-CV-90144
Denson	Willie	08-CV-90178
Dewbery	Jesse	10-CV-67544
Dougherty	Daniel	08-CV-89847
Doyle	Leo	08-CV-90155
Dubrovich	Frank	10-CV-68108
Dubrovich	John	10-CV-67557
Dumyahn	Gilbert	08-CV-89899
Dunn	Laura	08-CV-90086
Eagle	Kenneth	10-CV-67559
Economous	Jack	08-CV-90017
Ellena	Glenn	09-CV-60947
Ellis	Mae	08-CV-90213
Ellis	Robert	08-CV-90093
Elrod	Robert	09-CV-60937
Ely	Ernest	09-CV-60938
Engelman	Patrick	09-CV-60939
Evans	Jessie	08-CV-90214
Evol	Dandy	10-CV-68909
Ferguson	James	08-CV-90234
Ferrell	Paul	08-CV-89885
Fitzgerald	Charles	08-CV-89817
Flagg	Richard	10-CV-67556
Floyd	Elrie	08-CV-89967
Frangella	Russell	09-CV-60944
Frankenberger	Howard	09-CV-61717
Frattini	James	09-CV-60945
Gaddy	Bob	08-CV-90106
Gaddy	Clifford	08-CV-90081
Gavin	Carrie	08-CV-90197
Gehrke	David	10-CV-67444
Goessman	Lorene	08-CV-89484
Goins	Claude	08-CV-88531
Gorena	Eduardo	10-CV-67535
Graham	Lawrence	09-CV-60952
Graham	Marion	08-CV-90139
Granger	Elmer	09-CV-60953
Green	Ella	08-CV-90129
Grieff	Dale	09-CV-60954

Gunther	Robert	08-CV-91738
Gusman	Emilio	09-CV-60956
Halweg	Gordon	10-CV-67552
Hamerla	John	08-CV-90208
Harris	Rosella	08-CV-90135
Haskins	Harold	08-CV-89819
Hester	Billie	08-CV-90072
Hickey	Elmer	08-CV-90038
Hollins	Willie	08-CV-90201
Holloway	Fred	09-CV-61721
Hood	Marsha	08-CV-90936
Hosey	Novella	08-CV-90194
Hunt	Richard	10-CV-68075
Hurston	Herman	09-CV-61793
Jackson	John	09-CV-61722
Jackson	Robert	10-CV-67541
Janes	Jerry	08-CV-89995
Jasinski	Richard	09-CV-60007
Johnson	Felix	08-CV-90020
Johnson	James	08-CV-90156
Johnson	Richard	08-CV-89822
Joyce	Michael	09-CV-60961
Junior	Sylvester	08-CV-90210
Kappas	Jim	08-CV-90163
Kelley	Howard	10-CV-67555
Kelly	Ollie	10-CV-67546
Kinnary	Toivo	08-CV-90173
Klimek	David	08-CV-90065
Kocur	John	09-CV-61725
Kupina	Anton	08-CV-90207
Landers	Ronald	08-CV-92185
Lauzon	John	08-CV-89974
Levandowski	Jerome	08-CV-89870
Malone	Clifford	10-CV-68124
Martin	Bennie	10-CV-67550
Maske	Frederick	08-CV-90102
Mathews	Clifford	09-CV-64758
McCarthy	Daniel	08-CV-89991
McClain	Wallace	08-CV-89814
McCullum	Roosevelt	08-CV-89883
Menzio	Eugene	08-CV-89865
Metros	Roy	09-CV-61883

Miller	Albert	08-CV-90074
Minnick	Glenn	08-CV-90096
Mitchell	Arthur	10-CV-67654
Moffett	Charlie	08-CV-89987
Moffett	George	08-CV-89973
Moffett	Jacob	08-CV-90143
Moffett	Leon	08-CV-90075
Moody	Charles	08-CV-90116
Moore	James	08-CV-90069
Moore	Robert	08-CV-90032
Moore	Ulish	08-CV-89813
Muffler	William	08-CV-89976
Nehlsen	Michael	08-CV-91893
Nichols	John	08-CV-90185
Norberg	Earl	08-CV-90264
Norberg	Howard	10-CV-67537
Nurczyk	John	08-CV-89879
Odom	Deward	08-CV-90187
Ongenaе	Terry	10-CV-67551
Otto	Thomas	08-CV-89369
Patrick	Carolyn	08-CV-90221
Pauley	Donald	08-CV-90134
Payne	Lynn	08-CV-92307
Person	Arthur	08-CV-90157
Person	Ethel	08-CV-90227
Pomykala	Joseph	08-CV-89999
Pray	Frankie	08-CV-91884
Redar	Roy	08-CV-91429
Richards	Aloysious	08-CV-90180
Richardson	Eleanore	10-CV-67553
Richardson	Robert	10-CV-68113
Roberson	Freddie	08-CV-90080
Romanetto	Gary	08-CV-90048
Rome	Douglas	08-CV-89825
Ruesken	Louis	09-CV-61820
Rupslauk	Richard	08-CV-89850
Ryan	Michael	08-CV-90172
Ryan	Michael	11-CV-66747
Santerelli	Gerald	09-CV-60962
Scott	Edward	10-CV-67682
Scott	Henry	08-CV-90114
Scott	Thomas	08-CV-91314
Scrogam	Donald	08-CV-90002

Shambaugh	Burton	08-CV-90331
Shearer	Kenneth	08-CV-91430
Sheets	Gerrold	09-CV-61887
Shelby	Quincy	08-CV-90057
Shields	James	08-CV-89829
Siefert	Raymond	08-CV-90198
Silakowski	Gerald	09-CV-60967
Smith	Dale	08-CV-91717
Smith	Larry	10-CV-68072
Smith	Leo	08-CV-90276
Smith	Russell	10-CV-68123
Sperber	Ernest	08-CV-91942
Stahly	Robert	09-CV-60968
Studer	Bernard	09-CV-60971
Studer	Earl	09-CV-60972
Sullivan	Patrick	09-CV-61811
Swango	James	08-CV-90101
Terlep	Robert	09-CV-60974
Travis	Jim	08-CV-90170
Travis	Mikel Kent	08-CV-89843
Tryon	Robert	10-CV-68972
Van Dolah	Vernon	08-CV-91880
Waddell	Earl	08-CV-90160
Wheaton	John	08-CV-89990
White	Shirley	08-CV-90171
White	Thomas	08-CV-89871
Williams	Bruce	08-CV-91282
Williams	Eddie	08-CV-90000
Wilson	Irvin	08-CV-90339
Woods	James	08-CV-89965
Wright	Elmer	08-CV-90199
Wright	Joseph	08-CV-90161
Zwanzig	William	08-CV-90270

EXHIBIT B

**Protocol for Plaintiff and Co-Worker depositions to be taken in Cascino Vaughan Law
Offices MDL 875 cases assigned to Magistrate Judge David R. Strawbridge**

1. This protocol shall supercede any preceding agreed-upon, or ordered, protocol. It shall apply to all cases designated as the “First Ten” or “Top Ten” as well as the cases designated as CVLO-1, which are those subject to the court’s “Amended Case Management and Scheduling Order for CVLO-1.” It is further contemplated that the protocol shall apply to all of the CVLO cases assigned to this Magistrate Judge as they become the subject of scheduling orders over the next 18 months or so. As to any depositions already noticed, but not yet taken, this protocol shall apply to the extent that the parties have previously agreed upon certain provisions contained within the protocol, or have agreed to other procedures not contained within the protocol, and have been acting in accordance with those agreements, those agreements will be considered binding.¹ Other than as provided in this protocol, the depositions will be conducted pursuant to the Federal Rules of Civil Procedure.

2. The parties will issue a separate notice of deposition for each deponent pursuant to Rule 30 of the Federal Rules of Civil Procedure. The notice shall contain a separate caption including the plaintiff’s name and case number for each case in which the witness is being offered. The notice must be served upon all counsel of record in the case(s) listed in the caption at least 14 days before the proposed date. Depositions of plaintiffs and co-workers shall not be noticed as being taken “In re: All” cases. E-mail service is sufficient. The parties will endeavor to schedule depositions at hotel, court reporting agency or law firm conference rooms although the parties recognize some witnesses are unable to travel due to health or age. In addition to the information required by Rule 30, the notice of deposition will include the following:
 - the names of the plaintiff(s) and case number(s) in which the deposition is being taken

 - whether the testimony will be videotaped

 - the identity of the defendants about which the witness is expected to testify and if the witness is being offered in multiple cases, the identity of the defendants about which the witness is expected to testify and in which case the witness will offer that testimony

3. Objections by any defendant to the notice of deposition shall first be presented to counsel for plaintiff by e-mail to: cvlodep@gmail.com with a copy to all defense counsel of

¹We consider this to include any agreements reached between Robert McCoy, esq., as plaintiffs’ counsel and Michael Drumke, esq. as defense liaison counsel in their efforts to draft a deposition protocol pursuant to our Letter Order of June 27, 2011 and subsequent conversations with them.

record in the case(s) listed on the notice at least seven (7) days before the scheduled deposition. Once an objection to the notice is raised, all defendants of record in the case(s) listed on the notice shall be deemed to have joined in the objection unless they specifically indicate otherwise. Repetitive or duplicative objections must not be made. Once an objection is raised, the parties shall attempt to resolve the objection(s) in good faith. Objections which cannot be resolved by the objecting defendant and plaintiff's counsel shall be presented to the Court for resolution at least three (3) days before the scheduled deposition.

4. The defendants attending the deposition will determine the order of the defense cross-examination. Redirect and recross are allowed. The parties may seek to extend or shorten the time limits set forth in the Federal Rules of Civil Procedure for reasonable cause and the Court anticipates cooperation in making such agreements. Each defendant shall be afforded a fair and reasonable opportunity to ask question of every witness.²
5. An objection by one party during the deposition is deemed asserted by all parties. Relevance objections are preserved and are not to be asserted. To expedite the taking of depositions, counsel must instruct witnesses on deposition procedures prior to commencement of the deposition on the record.
6. In order that parties do not needlessly attend depositions, any defendants who have been named, served, and who have entered their appearance(s) in the case(s) listed in the caption of the deposition notice may attend the deposition. However, if any defendant, who has been named, served and appeared in the case(s) listed in the caption of the deposition notice is not listed in the deposition notice as being the subject of expected testimony, that defendant shall not be required to, but may attend the deposition. Should

²Although there was some discussion between the parties with respect to including some time limit on the depositions which could not be exceeded except by agreement or leave of court, we decline to include such a limit in that there will likely be considerable variation with regard to the time necessary to complete particular depositions. As the comments to Federal Rule of Civil Procedure 30(d) recognize, the degree to which the default 7-hour limitation should be extended, if at all, depends upon several factors, including whether the examination covers long periods of time or lengthy documents, whether it is a multi-party case or a multi-case deposition and whether the lawyer for the witness also asks questions of the witness. We understand that these factors may apply to particular depositions to varying degrees, and expect that the attorneys will use their time efficiently to fully question the deponent while avoiding questions that are unnecessary or duplicative of questioning already conducted by another party. Should there be an abuse of this process, we remind the parties that sanctions may be imposed, including the award of reasonable expenses and attorneys fees, for conduct that “impedes, delays or frustrates the fair examination of a deponent.” Fed. R. Civ. P. 30(d)(2).

any defendant that is not listed in the deposition notice as being the subject of expected testimony be unexpectedly implicated in said deposition, said defendant will be given an opportunity to examine the witness prior to any use of the deposition against that defendant. The purpose of this clause is to eliminate the need for parties to cross-examine a witness about the inability to provide testimony about a particular defendant which is not identified in the notice. If any defendant not listed in the notice of deposition is implicated in a deposition and any party to the notice wishes to use the testimony against the unlisted defendant, the party seeking to use the testimony shall provide notice within 14 days of the date of deposition to the unlisted defendant and schedule a time to resume the deposition for the purposes only of the testimony relating to the unlisted defendant. Failure to provide such notice within 14 days of the conclusion of the deposition shall constitute waiver of any rights by the parties to use the testimony against the unlisted defendants in any matter and such testimony shall be barred as against the unlisted defendants.

7. A party providing notice of videotaping shall be responsible for arranging the videotaping and paying the videographer's appearance fee, if any.
8. Parties may attend by telephone provided they make arrangements in advance through the court reporting services designated in paragraph 9 below and agree to pay their *pro rata* share of the costs for the teleconference. Parties attending by phone must keep phones muted during testimony, except for the purposes of asking questions or asserting objections, to prevent disruptive sounds. All parties appearing by phone shall be identified on the written record.
9. Each party shall pay the cost of obtaining deposition transcripts desired by the party. The parties agree to cooperate to obtain negotiated rates from a court reporting service. Unless otherwise agreed to by all parties or unless the designated firm is unable to provide court reporting services, the court reporting firm to be used for all depositions shall be:

For all non-Wisconsin depositions:

PohlmanUSA Court Reporting
10 South Broadway, Suite 1400
St. Louis, MO 63102
Phone: (877) 421-0099
Fax: (314) 421-1115
Website: <http://pohlmanusa.com>

For all Wisconsin depositions:

Gramann Reporting, Ltd.

710 North Plankinton Avenue, Suite 710
Milwaukee, WI 53203
Phone: (414) 272-7878 or (800) 899-7222
Fax: (414) 272-1806
After Hours: (262) 367-8295 or (414) 380-9885
Website: www.gramannreporting.com

10. Multiple depositions may be noticed on the same day and at up to three (3) locations per day providing that a party may seek to reschedule if experienced deposition counsel is not available to cover the second or third depositions.³ Without the agreement of all counsel of record in the case(s) listed in the caption of the deposition notice, no deposition shall be scheduled on a Saturday, Sunday, court holiday or on the day prior to or day of a court-mandated status conference in the matters assigned to Magistrate Judge Strawbridge at which plaintiff's counsel or defense liaison counsel are required to be present.
11. No deposition testimony may be used against any party that did not receive notice of the deposition. The parties further stipulate that deposition testimony against a party not represented at said deposition on account of that party's reliance upon the notice of deposition shall not be used against the unrepresented party.⁴
12. Any party may, no later than 10 days before the date of the deposition, cross-notice the deposition against a defendant not identified at the job sites in plaintiff's pleadings or answers to discovery without court approval if the defendant is a party in a case assigned

³ This allowance is made in recognition of the expedited discovery schedule under which counsel will be working. It is also a compromise between the positions of the parties, where plaintiffs' counsel wished to conduct up to four depositions in one day and defense counsel would agree to conduct only up to two depositions per day.

⁴The parties disputed the inclusion of this provision. While plaintiffs' counsel felt it was sufficient to rely upon the procedures set out in Paragraph 6 of the Protocol, defense counsel felt those procedures were insufficient. They expressed concern that any uncertainty regarding the future use of deposition testimony against a party who did not attend that deposition in reliance on its absence from the notice of deposition would encourage every defendant to have counsel present at each deposition to protect its rights should the deponent unexpectedly implicate them. It has already been decided by the Presiding Judge that deposition testimony may not be used in the MDL against a party who was not represented at the deposition. *Cowley v. AC&S*, Civ. No. 07-62831, Doc. No. 36 (E.D.Pa. Dec. 23, 2010). We make that principle explicit in this paragraph. Defense counsel also requested that the use of any deposition testimony be limited to cases in which Cascino Vaughan Law Offices represents the interests of the plaintiff, and for no other purpose. Given our unwillingness to engage in any speculation over the prospective use of any deposition, we decline to impose such a limitation.

to Magistrate Judge Strawbridge. If the defendant cross-noticed is a non-party in the case(s) listed on the notice, the cross-notice is subject to the consent of the non-party defendant.

13. Unless otherwise agreed to by counsel, no deposition may be noticed until plaintiff has complied with all orders regarding discovery applicable to the case, including those orders previously entered by Judge Reed during the mediation phase of this litigation. Discovery that has been timely served and is answerable prior to the date of the deposition shall be deposited with IKON by the date it is due so that it may be available for use prior to the deposition. Additionally, plaintiff's complete verified answers to standard interrogatories and complete fact witness disclosures, as well as any Social Security statement of earnings, military records, union records or medical records in the possession of the plaintiff or the plaintiff's attorneys shall be deposited with IKON in Chicago prior to the issuance of any notice of deposition of that plaintiff by plaintiff's counsel. If any of the aforementioned records are not in the possession of the plaintiff or plaintiff's attorneys, plaintiff shall provide signed authorizations to obtain those records to the defense at least 30 days prior to the date the deposition is to occur. Defense counsel may also request signed authorizations to obtain those records at any time, without regard to whether a notice of deposition has been issued in a particular case.⁵

⁵ This paragraph represents a resolution by the Court of a disagreement between the parties as to its precise terms. While the parties agreed that plaintiffs' counsel would provide answers to standard interrogatories, and any medical, military or union records, or bankruptcy claim forms in their possession prior to the issuance of a notice of deposition, they disagreed as to when the answers to the standard interrogatories were to be verified, as well as whether plaintiffs' counsel would provide fact witness disclosures or Social Security statements of earnings. Additionally, there was disagreement as to whether any deadline should be included for the provision of authorizations allowing defense counsel to obtain such records independently.

We conclude that defense counsel is entitled to verified answers to interrogatories and fact witness disclosures prior to the issuance of a notice of deposition. We do not anticipate that this will be unduly burdensome considering that, under Judge Reed's Order of November 15, 2010, verified answers were to have been deposited in IKON no later than February 21, 2011. Similarly, fact witness disclosures are normally produced early in the discovery process under Rule of Civil Procedure 26(a) and defense counsel is entitled to use those disclosures in preparation for a deposition. Further, we see no reason, and plaintiffs' counsel has provided us with none, to distinguish Social Security records from the other records plaintiffs' counsel has agreed to provide. To the extent those records are in their possession, they must be provided to defense counsel. Otherwise, signed authorizations to obtain those records must be provided to the defense at least 30 days prior to the date the deposition is to occur.

14. Plaintiffs may petition the Court to modify the provisions of this protocol for good cause such as in situations in which the plaintiff suffering from a serious medical condition such as to be deemed *in extremis*.

And it is so ordered.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

Dated: August 4, 2011